

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ZACHARY VERGARA, individually and on  
behalf of a class of similarly situated  
individuals,

Plaintiff,

v.

NINTENDO OF AMERICA INC., a  
Washington corporation,

Defendant.

No. 1:19-cv-06374

Honorable Gary S. Feinerman

Magistrate Judge Jeffrey T. Gilbert

**NINTENDO OF AMERICA INC.'S  
MOTION TO COMPEL ARBITRATION AND DISMISS**

Defendant Nintendo of America Inc. (“Nintendo”) moves the Court to order Plaintiff Zachary Vergara to arbitrate on an individual basis the claims he asserts against Nintendo and to dismiss this action. In support of this motion, Nintendo relies on and incorporates its concurrently filed Memorandum in Support of Nintendo’s Motion to Compel Arbitration and Dismiss and the Declaration of Kristopher Kiel in Support of Nintendo’s Motion to Compel Arbitration and Dismiss.

1. When Mr. Vergara chose to purchase and set up his Nintendo Switch video-game console, he agreed to individual arbitration of any claims by accepting Nintendo’s End-User License Agreement (“EULA”), which contains a mandatory arbitration provision and class-action waiver.

2. Mr. Vergara so agreed after receiving notification of the EULA, having the opportunity to easily review all terms and conditions that apply under that agreement, and affirmatively clicking “Accept.” He did not stop the set-up process or decline the agreement. Nor did he opt out of arbitration, even though he had 30 days to do so.

3. Courts in this Circuit and across the country routinely enforce clickwrap agreements with mandatory-arbitration and class-action-waiver provisions just like the one to which Mr. Vergara agreed.

4. In contravention of the Federal Arbitration Act's strong policy in favor of arbitration and his valid arbitration agreement with Nintendo, Mr. Vergara filed a putative class action against Nintendo. He should be compelled to arbitrate his claims.

5. The parties have delegated all other matters regarding the arbitration agreement to the arbitrator, and Mr. Vergara has no valid defense to the delegation provision itself.

Accordingly, for the reasons addressed in the concurrently filed Memorandum, Nintendo respectfully requests that the Court compel arbitration and dismiss or, in the alternative, stay Mr. Vergara's action.

//

//

//

//

//

//

//

//

//

//

//

//

Dated: December 2, 2019

Respectfully Submitted,

Nintendo of America Inc.

By: s/ Eric J. Weiss  
One of Its Attorneys

Christopher B. Wilson  
Kathleen A. Stetsko  
**PERKINS COIE LLP**  
131 S Dearborn Street # 1700  
Telephone: 312.324.8400  
Fax: 312.324.9400  
Email: CWilson@perkinscoie.com  
Email: KStetsko@perkinscoie.com

David J. Burman (*pro hac vice*)  
Eric J. Weiss (*pro hac vice*)  
Mallory Gitt Webster  
**PERKINS COIE LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Telephone: 206.359.8000  
Fax: 206.359.9000  
Email: DBurman@perkinscoie.com  
Email: EWeiss@perkinscoie.com  
Email: MWebster@perkinscoie.com

**CERTIFICATE OF SERVICE**

On this date I caused to be served on each of the attorneys identified below, via the delivery methods indicated below, a copy of the foregoing document:

Eugene Y. Turin  
**MCGUIRE LAW, P.C.**  
55 W. Wacker Drive, 9th Floor  
Chicago, IL 60601  
Telephone: 312.893.7002  
Fax: 312.275.7895  
Email: eturin@mcgpc.com

☒ Via the Clerk's eFiling Application  
☐ Via U.S. Mail, 1st Class  
☐ Via Overnight Delivery  
☐ Via Facsimile  
☒ Via Email  
☐ Other: \_\_\_\_\_

*Attorney for Zachary Vergara*

Dated: December 2, 2019

By: s/ Mallory Gitt Webster